REMARKS

Applicants respectfully request the Examiner to enter the amended claims, and thereafter pass the application onto an allowance. Applicants acknowledge with appreciation the Examiner's careful consideration of their application.

Applicants acknowledge the Examiner's double patenting rejection, claims 1-12, over commonly owned U.S. Patent No. 6,777,083, when considered in combination with (in view of) U.S. Patent No. 4,693,553. Applicants respectfully request reconsideration and withdrawal of this rejection. The referenced U.S. Patent No. 6,777,083 was granted on August 17, 2004 based on an application filed October 12, 2000. The present application was filed on June 22, 2001 and did not receive an Office Action until December 3, 2004, which is a delay of 3½ years.

The Office Action also treats the claims of U.S. Patent No. 6,777,083 as if they were prior art and combines the secondary reference as if this were plain, vanilla statutory obviousness rejection under title 35 U.S.C. §103. Applicants earnestly, but respectfully, submit that the analytic approach articulated in the Office Action, paragraph no. 3, is inapposite the non-statutory obviousness-double patenting.[1] The misapplication of a non-statutory rationale would appear to be suggested by the Office Action using such words as "discloses" (page 2, fourth line from the bottom), "fails to teach" (page 3, line 1), "Mizota further teaches" (page 4, line 5), "Mizota further teaches" (page 4, line 8), "a combination of Mizota and Sasaki teaches" (page 4, line 11), and so on.

[1] General Foods Corp. v. Studiengesellschaft Kohakohle mbH, 972 F.2d 1272 (Fed. Cir. 1992). In the General Foods case, the Federal Circuit reversed because the District Court failed to consider whether the claims as a whole were patentably distinct from each other. Among the District Court's errors was the failure to recognize that the inventions claimed in the later patent had to be read as a whole, and that in ascertaining what inventions did the earlier patent claim, it was plain error to use a single step or claim element as though it was a prior art disclosure being applied to support obviousness rejection under 35 U.S.C. §103.

Applicants would appreciate the Examiner taking the matter up for further reconsideration. Applicants counsel will telephone the Examiner to schedule a telephone discussion.

In the immediate above regard, the Examiner will appreciate that the Patent Office has already cost the patent applicants herein 3½ years lost patent term. The patent application was filed on June 22, 2001 and received no Office Action for 3½ years. It seems inappropriate given the concurrent and more expeditious prosecution by the Patent Office of another application, commonly owned, to give up even still further patent term by way of a terminal disclaimer herein. The terminal disclaimer and the still additional loss of patent term arise solely and exclusively as a result of the PTO's handling of this application and the more expeditious handling of the slightly earlier filed, but commonly owned application, now U.S. Patent No. 6,777,083.

Applicants acknowledge with appreciation the Examiner's constructive comments concerning claim language, and specifically the vocabulary requested to overcome the formality rejections noted in the Office Action on pages 4 and 5. Applicants have endeavored to amend their claims to respond in good faith to the Examiner's constructive criticisms and suggestions. Applicants respectfully submit amended claims 1, 2 and 3 address and overcome all the Examiner's concerns. Similarly, claim 8 has been re-written as an independent claim while including amendments to respond to the Examiner's concerns (page 5 of the Office Action). Applicants earnestly, but respectfully, submit their claims are fully compliant with the requirements of 35 U.S.C. §112, second paragraph, and respectfully the Examiner to reconsider and withdraw the rejection.

Applicants respectfully traverse the rejection of claims of 7 and 10-12 under 35 U.S.C. §103(a) over U.S. Patent No. 6,157,757 in view of U.S. Patent No. 4,693,553. The Examiner will appreciate the amended dependencies in various claims herein, specifically

claims 10, 11 and 12. The Examiner will also appreciate claim 7 has been canceled without prejudice.

The application is now in condition for allowance and notices the same is earnestly, but respectfully, solicited.

Date: **May 3, 2005**

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